**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL WRIT PETITION NO.1040 OF 2006**

M/s.Citilink Sales & Services ...Petitioner
Vs.
M/s.Mirc Electronics Ltd. & Anr. ...Respondents

Shri G.H.Keluskar for the Petitioner.
Shri Suhas B.Kanherkar- Legal Secretary of the Respondent No.1 in person.
Shri S.V.More, A.P.P. for the State.

**CORAM : A. S. OKA, J.**
**DATE : SEPTEMBER 05, 2006.**

**P.C.:**

1. Heard Shri Keluskar appearing for the Petitioner and the representative of the first Respondent appearing in person. The first Respondent is the complainant in a private complaint filed under section 138 read with section 141 of the Negotiable Instruments Act, 1881. An Application was made by the Petitioner at Exhibit 49 before the learned Judicial Magistrate praying that the cheque in dispute be sent for opinion of the handwriting expert in the interest of justice. The said Application was rejected by the learned Magistrate by order dated 30th January, 2006. The order passed by the learned Magistrate has been confirmed in Revision Application preferred by the present Petitioner.

2. Shri Keluskar appearing for the Petitioner

submitted that there was a serious dispute regarding handwriting appearing on the cheque and considering the fact that the specific case of the Petitioner was that the cheque was issued only by way of security, the learned Trial Judge ought to have allowed the Application made by the Petitioner. He submitted that no prejudice would have caused to the first Respondent if the Application was allowed.

3. I have considered the submissions. In Application Exhibit 49, the Petitioner has stated that it is the case of the Petitioner that the said cheque was issued but the same was partially blank as the date and amount in words as well as the amount in figures were not mentioned. It is the case of the Petitioner that some officials of the first Respondent without obtaining consent of the Petitioner have written date and amount in words and figures. While rejecting the Application filed by the Petitioner, the learned Trial Judge has observed thus:

> "Read application and say. Made close scrutiny of cheque Exhibit 22 and record also and **it is seen that the signature of drawer and name of drawee in the cheque are**

**undisputed**. It is also seen that rest of the contents in cheque are in different ink and hand writing and that part is also not disputed. **It is also nowhere case of complainant that said rest of the contents in cheque Exhibit 22 are in the handwriting of accused only**."(Emphasis supplied)

4. In view of the factual position noted above, the learned Trial Judge observed that no purpose will be served by referring the cheque to the handwriting expert. The learned Sessions Judge has confirmed the said order. If it was never the case of the first Respondent that the Petitioner himself had written the date and amount in the cheque, no fault can be found with the impugned order of the learned Magistrate especially when there was no dispute regarding signature of the drawer and name of the drawee on the cheque. No interference is called for in the Petition under Article 227 of the Constitution of India.

Petition is rejected.

5. Nothing mentioned in this order shall be construed as expression of any opinion on merits of the pending complaint.

**JUDGE**